

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>CHARLES SWINT,</b>  <div style="text-align: right;"><b>Plaintiff,</b></div>	)	
	)	
	)	<b>C.A. No. 23-232 Erie</b>
	)	
<b>v.</b>	)	
	)	<b>District Judge Susan Paradise Baxter</b>
<b>L. J. OLIVER, et al,</b>  <div style="text-align: right;"><b>Defendants.</b></div>	)	<b>Magistrate Judge Richard A. Lanzillo</b>

**MEMORANDUM ORDER**

Plaintiff, an inmate incarcerated at the State Correctional Institution at Albion, Pennsylvania (“SCI-Albion”) initiated this *pro se* civil rights action by filing a complaint with the Commonwealth Court of Pennsylvania, on or about April 6, 2023. [ECF No. 1-1]. The Commonwealth Court transferred the matter to the Court of Common Pleas of Erie County, Pennsylvania, and Defendants subsequently removed the matter to this Court pursuant to a Notice of Appeal dated August 8, 2023. [ECF No. 1]. The matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On October 30, 2023, Plaintiff filed an amended complaint [ECF No. 28], which is the operative pleading in this case. Named as Defendants are six current or former employees at SCI-Albion: former Superintendents Lonnie Oliver (“Oliver”) and Earl Jones (“Jones”), Superintendent Patricia Thompson (“Thompson”), Unit Managers Steven Soliwoda (“Soliwoda”) and Christopher Seymour (“Seymour”), and Lieutenant Augustus Floyd (“Floyd”). Plaintiff asserts that Defendants failed to protect him from abuse by other inmates in violation of

his Eighth Amendment rights, and that Defendants Thompson and Jones violated his Fourteenth Amendment equal protection rights by not affording him the opportunity to attend parole classes without being harmed. In addition, it appears that Plaintiff asserts a First Amendment claim of retaliation against all Defendants based on the alleged retaliatory conduct of other staff members that occurred after Plaintiff filed the within action.

On November 9, 2023, Defendants filed a motion to dismiss Plaintiff's amended complaint for failure to state a claim upon which relief may be granted [ECF No. 32], to which Plaintiff filed a response [ECF No. 42]. On April 29, 2024, Chief Magistrate Judge Lanzillo issued a Report and Recommendation ("R&R") recommending that Defendants' motion be granted in part and denied in part. [ECF No. 48]. Specifically, the R&R recommends that Defendants' motion be (1) granted as to Plaintiffs' Fourteenth Amendment equal protection claim against all Defendants and his Eighth Amendment failure to protect claim against Defendant Seymour, and that such claims be dismissed without prejudice to Plaintiff's right to amend, and (2) denied as to Plaintiff's Eighth Amendment failure to protect claim against Defendants Soliwoda, Oliver, Thompson, Jones, and Floyd. In addition, the R&R recommends that, to the extent Plaintiff asserts a First Amendment retaliation claim, such claim should be dismissed without prejudice pursuant to 28 U.S.C. § 1915A. (*Id.* at pp. 19-20). No timely objections to the R&R have been received by the Court.

Thus, after *de novo* review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:


AND NOW, this 22nd day of May, 2024;

IT IS HEREBY ORDERED that Defendants' motion to dismiss [ECF No. 32] is GRANTED IN PART and DENIED IN PART, as follows:

1. The motion is GRANTED as to Plaintiff's Fourteenth Amendment equal protection claim against all Defendants and his Eighth Amendment failure to protect claim against Defendant Seymour, and such claims are DISMISSED, without prejudice; and
2. The motion is DENIED as to Plaintiff's Eighth Amendment failure to protect claim against Defendants Soliwoda, Oliver, Thompson, Jones, and Floyd.

IT IS FURTHER ORDERED that, to the extent Plaintiff has alleged a First Amendment retaliation claim, such claim is DISMISSED pursuant to 28 U.S.C. § 1915A, without prejudice.

IT IS FURTHER ORDERED that Plaintiff is granted leave to amend his complaint within thirty (30) days of the date of this Order to correct the deficiencies noted in the R&R with regard to his Fourteenth Amendment equal protection claim, his Eighth Amendment failure to protect claim against Defendant Seymour, and any First Amendment retaliation claim he may have intended to allege. In the event Plaintiff fails to amend any of the foregoing claims within the time prescribed, such claims will be dismissed with prejudice without further notice of the Court. The report and recommendation of Chief Magistrate Judge Lanzillo, issued April 29, 2024 [ECF No. 48], is adopted as the opinion of the Court.

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
Chief U.S. Magistrate Judge